

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

STERICYCLE, INC.

Employer

and

Case 4–RC–20970

TEAMSTERS LOCAL UNION 429, a/w
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO¹

Petitioner

**REGIONAL DIRECTOR’S DECISION AND
DIRECTION OF ELECTION**

The Employer, Stericycle, Inc., provides medical waste collection and treatment services to commercial customers throughout the United States and in several foreign countries. The Petitioner, Teamsters Local Union 429, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the over-the-road Drivers employed at the Employer’s Morgantown, Pennsylvania facility (the Facility).

The case presents the following issues: whether the Employer is subject to the Board’s jurisdiction; whether the Petitioner is a labor organization; and whether the petitioned-for unit is appropriate.

The petition was filed on January 11, 2005, and on that date, a hearing was scheduled for January 21, 2005. At the Employer’s request, the hearing was postponed until January 26, and a hearing officer of the Board conducted a hearing on that date. Notwithstanding this accommodation and the presence of its attorney, the Employer did not take a position or present evidence as to the above issues at the hearing. The Employer’s attorney stated that he was not certain that Stericycle, Inc. “is the employing entity of this particular facility,” although he indicated that the Employer purchased the assets of a predecessor employer at the Morgantown location. Neither party filed a brief.

¹ The Petitioner’s name appears as amended at the hearing.

After considering the evidence, I conclude that the Employer is engaged in interstate commerce, that the Petitioner is a labor organization within the meaning of the Act, and that the petitioned-for unit is appropriate. Accordingly, I have decided to direct an election in the petitioned-for unit.

In this Decision, I will first set forth the facts and my analysis concerning the issue of whether the Employer is in commerce. Next, I will deal with the labor organization issue. Thereafter, I will present the facts concerning the appropriateness of the unit and the reasoning in support of my conclusion.

I. JURISDICTION

A. Facts

The Employer is headquartered in Lake Forest, Illinois. Founded in 1989, the Employer is, according to its corporate website, the largest full-service provider of medical waste treatment and collection services in the United States.

A recent Dun & Bradstreet Business Information Report shows that the Employer's stock is publicly traded on the NASDAQ exchange, and as of March 2004, there were more than 43 million shares of common stock outstanding. The Employer earned \$453 million in revenue and \$65.78 million in net income for 2003. In the first half of 2004, the Employer earned \$241 million in revenue and nearly \$39 million in net income. The company has completed at least 72 corporate acquisitions since 1993, including the medical waste business of Browning Ferris Industries, Inc. in the United States, Canada, and Puerto Rico. The Employer also has at least 11 other subsidiaries, including Medical Waste Corporation of America, Inc., in Morgantown, Pennsylvania.²

According to its corporate website, the Employer operates 43 treatment/collection facilities and 102 transfer/collection facilities throughout North America, as well as in Asia, Australia, the United Kingdom, and South America. Facilities are situated in at least 20 states. From these facilities, the Employer collects and transports medical waste and related items for more than 300,000 commercial customers. These customers include 295,500 small medical waste generators such as outpatient clinics and medical offices, and 5,500 large medical waste generators such as hospitals and pharmaceutical manufacturers.

Driver Keith Somerday previously worked at the same location for the Employer's predecessor at the Facility. In late 2002 or early 2003, the Employer took over the Facility, and Stericycle representatives conducted a group meeting with the employees to explain the circumstances of the takeover. Somerday's regular route encompasses customers in Pennsylvania, Maryland, Delaware, and New Jersey. Four other Drivers at the Facility also service customers outside Pennsylvania. The name "Stericycle" is on Somerday's paycheck, he

² The record does not explain in greater detail the corporate relationship between the Employer and Medical Waste Corporation of America.

participates in Stericycle's 401(k) plan, he has a Stericycle employee handbook, he wears a jacket and hat with the name "Stericycle" on it, and his truck bears the "Stericycle" logo and is registered in Lake Forest, Illinois.

In three previous decisions by Regional Directors involving other facilities, the Employer stipulated that it was engaged in commerce within the meaning of the Act.³

B. Analysis

The Board will assert jurisdiction over any non-retail entity that has an annual revenue outflow or inflow, direct or indirect, across state lines of at least \$50,000. *Siemons Mailing Service*, 122 NLRB 81 (1959). In this case, the record shows that the Employer operates in 20 states and has provided services valued well in excess of \$50,000 to points outside the Commonwealth of Pennsylvania. At least five drivers from the Facility regularly provide services outside of Pennsylvania. Thus, the Employer meets the Board's direct outflow standard for asserting jurisdiction over a non-retail enterprise.

Moreover, in *Tropicana Products, Inc.*, 122 NLRB 121, 123 (1958), the Board held that jurisdiction may be asserted in any case in which, "an employer has refused, upon reasonable request by Board agents, to provide the Board or its agents with information relevant to the Board's jurisdictional determinations, where the record developed at a hearing, duly noticed, scheduled and held, demonstrates the Board's statutory jurisdiction, irrespective of whether the record demonstrates that the Employer's operations satisfy the Board's jurisdictional standards." See *Continental Packaging Corp.*, 327 NLRB 400, 401 (1998); *Quality Motels*, 194 NLRB 1035, 1036-1037 (1972). Here, the Employer has refused to supply commerce information although it was given ample opportunity to do so.⁴ In this connection, the Employer had 15 days notice of the hearing, which had been postponed for five days at its request. In these circumstances, only statutory jurisdiction need be established.

The record shows that the Employer is a multistate, multinational corporation that regularly engages in interstate commerce, for which it earned more than \$450 million in revenue last year. The Drivers at the Morgantown facility operate in several states. Moreover, in previous cases, the Employer has stipulated that it is engaged in interstate commerce. I therefore find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

Despite the Employer's attorney's expressed uncertainty that the Employer "is the employing entity" of the employees at this Facility, the record includes sufficient evidence that Stericycle is the Employer of the employees. Thus, the employees' paychecks, 401(k) plan, and handbook all display the name "Stericycle," representatives of Stericycle explained the takeover of the Facility to employees in late 2002 or early 2003, and the employees' trucks and uniforms

³ Case 4-RC-19915 (March 15, 2000); Case 16-RC-10251 (September 11, 2000); and Case 8-RC-15997 (February 9, 2000).

⁴ The Employer did not object to the admission of Regional Director decisions in Regions 4, 8 and 16, certain pages from the Employer's website and a Dun & Bradstreet report.

have the name “Stericycle” printed on them. As the Employer presented no evidence to the contrary, I find that the Employer is the employer of the employees at the Facility.

II. LABOR ORGANIZATION STATUS

The Petitioner is a local union affiliated with the International Brotherhood of Teamsters. It currently has about 3,945 dues-paying members, who participate in monthly meetings and directly elect local officers. The Petitioner has negotiated collective-bargaining agreements with various employers and processes grievances on behalf of employees it represents. I therefore find that employees participate in the Petitioner’s affairs and that the Petitioner exists for the purpose of dealing with employers concerning employees’ terms and conditions of employment. Moreover, the Board has previously found the Petitioner to be a labor organization. *W.C. McQuaide, Inc.*, 319 NLRB 756 (1995), *enfd.* in relevant part, 133 F.3rd 47 (D.C. Cir. 1998); *A to Z Maintenance Corp.*, 309 NLRB 672 (1992). Accordingly, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850, 851-852 (1962).

III. UNIT

A. Facts

At the Facility, the Employer employs about 15 to 18 over-the-road Drivers, 25 to 30 Dock Workers, and four Maintenance employees. Tim Barrett is the Plant Manager, and Darren Reithauer is the Transportation Manager.

The over-the-road Drivers operate straight trucks, tractor-trailers, and roll-off trucks⁵ and collect and transport medical waste and other products from customers. Reithauer supervises the Drivers, all of whom are required to have CDL licenses. Driver Somerday spends all but half an hour of his eight to 11-hour workday away from the Facility. In addition to his customer route, he removes dead animals from the Facility for private cremation.

Dock Workers unload trucks and process medical waste using machinery in a building at the Facility. They may also park trucks at the docks on the premises after they are dropped off by the Drivers. However, Dock Workers do not have CDL licenses and are not permitted to drive the trucks off the premises. One of the Dock Workers removes dead animals from the trucks. Dock Workers staff two shifts, and each shift has a different supervisor. The record does not include the names of the Dock Workers’ direct supervisors, who report to Tim Barrett. Dock Workers typically work four 12-hour shifts weekly.

Maintenance employees maintain and repair the machinery that processes the medical waste. They may also perform routine maintenance on the Employer-owned trucks, such as

⁵ Roll-off trucks are trucks that mechanically lift and empty dumpsters and do not require manual loading.

changing light bulbs or working on cables; engine repairs are performed by other companies. The Employer also has a janitor working at the Facility. Maintenance employees report directly to Barrett.

All employees wear uniforms with Stericycle logos on their hats, shirts, and jackets. The Maintenance employees and Dock Workers wear the same color uniform, which is different than the uniforms worn by Drivers. There is limited interaction between the Drivers, who are predominantly on the road, and the other employees, who remain at the Facility. The Drivers do not share breaks with other employees, although they are permitted to use the same breakroom when at the Facility. There is no evidence of transfer or interchange among the job classifications. All employees punch a time clock.

B. Analysis

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, the inquiry ends. *Dezcom, Inc.*, 295 NLRB 109, 111 (1989). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See *The Boeing Co.*, 337 NLRB 152, 153 (2001); *Bartlett Collins Co.*, 334 NLRB 484 (2001). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). It is well settled that the unit need only be *an* appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd.* on other grounds 190 F.2d 576 (2d Cir. 1951). In determining whether a group of employees possesses a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, skills and job functions, contact and interchange, and similarities in wages, hours, benefits, and other terms and conditions of employment. See *Home Depot USA*, 331 NLRB 1289 (2000); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

The Board has found units limited to Drivers appropriate where they lack substantial interchange with other employees, perform significantly different functions, possess different skills, and work under different immediate supervision. *Home Depot USA, Inc.*, 331 NLRB 1289, 1291 (2000); *Rinker Materials Corp.*, 294 NLRB 738, 739 (1989).

In this case, the record shows very limited interaction between the Drivers and other employees. In contrast to other employees, Drivers work predominantly away from the Facility and have little opportunity for contact with other employees. They are required to have CDL licenses. Drivers wear different colored uniforms and have different supervision than other employees, and they do not share job functions. There is no evidence of interchange between the Drivers and other classifications. Accordingly, I find that the Drivers have a community of interest separate from other employees and that the petitioned-for unit is appropriate for the

purposes of collective bargaining within the meaning of Section 9(b) of the Act.⁶

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner is a labor organization that claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

⁶ The Employer filed a post-hearing Motion to Dismiss the Petition or, in the alternative, Grant a New Hearing with a Different Hearing Officer. These motions have been carefully considered and are hereby denied.

In support of the Motion to Dismiss, the Employer states, without elaboration, that, "The record is insufficient to prove that the petitioned-for 'employer' is the employer within the meaning of the Act." The record, however, contains substantial evidence that the Employer employs the petitioned-for employees, and the Employer has provided no facts that would call the Employer's status into question. Accordingly, the Motion to Dismiss is denied.

In its alternative motion, the Employer contends that the hearing officer displayed bias in favor of the Petitioner at the hearing by speaking ex parte to the Petitioner's counsel, researching the issues in the case, introducing the Employer's corporate website into evidence, and answering a question from the Petitioner's counsel on the record. After carefully reviewing the entire record, I find that this contention is without merit. A representation hearing is a nonadversarial investigatory process at which the hearing officer is responsible for developing a full record. *Bendix Corp.*, 150 NLRB 718 fn.1 (1964); Board's Rules and Regulations Section 102.64 (a). In exercising this responsibility, "The hearing officer may call for and introduce all appropriate documentary evidence, being limited only by the relevance of the evidence to the issues." NLRB Casehandling Manual (Part Two) Representation Sec. 11188.1. Additionally, in developing a full record, a hearing officer may engage in ex parte discussions with representatives of the parties. *Bendix Corp.*, above.

In this case, the Employer's refusal to present any evidence, or otherwise to cooperate in developing the record, necessitated the Hearing Officer's active participation. In these circumstances, the Hearing Officer quite properly entered records into evidence and sought testimony needed to resolve the issues in this case. Accordingly, the Employer's motions are denied.

All full-time and regular part-time over-the-road Drivers employed by the Employer at its Morgantown, Pennsylvania facility, excluding all other employees, guards and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **Teamsters Local Union 429, a/w International Brotherhood of Teamsters, AFL-CIO**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized

(overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **March 1, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658, or by e-mail to Region4@NLRB.gov.⁷ Since the list will be made available to all parties to the election, please furnish a total of two (2) copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by e-mail. For details on how to file a request for review by e-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EST on **March 8, 2005**.

Signed: February 22, 2005

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

⁷ See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when electronically submitting representation case documents to the Board, or to a Region's electronic mailbox. OM 05-30 is available on the Agency's website at www.nlr.gov.